

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB JUNE 12, 00
U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Agrisolutions Inc.

Serial No. 75/286,177
Serial No. 75/286,178
Serial No. 75/286,179
Serial No. 75/286,180

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Lucchesi, L.C. for Agrisolutions Inc.

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102 (Thomas V. Shaw, Managing Attorney)

Before Chapman, Wendel and Bottorff, Administrative
Trademark Judges.

Opinion by Bottorff, Administrative Trademark Judge:

Applicant filed four intent-to-use applications
seeking registration on the Principal Register of the
following four marks:

BEEF OFFICE for "personal computer software for
providing information management of accounting, tax
preparation, production scheduling, education,

training, and consultation for use by agricultural cattle farming businesses";¹

CROPS OFFICE for "personal computer software for providing information management of accounting, tax preparation, production scheduling, education, training, and consultation for use in the agricultural produce industry";²

COTTON OFFICE for "personal computer software for providing information management of accounting, tax preparation, production scheduling, education, training, and consultation for use by agricultural cotton farming businesses";³ and

RICE OFFICE for "personal computer software for providing information management of accounting, tax preparation, production scheduling, education, training, and consultation for use by agricultural rice farming businesses."⁴

The Trademark Examining Attorney refused registration under Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1), in each of the applications, on the ground that the mark depicted in each application is merely descriptive of the goods identified in that application. When the refusals were made final, applicant appealed in each case.

Applicant and the Trademark Examining Attorney filed main briefs in each case. Applicant did not file a reply brief in any of the cases, nor did applicant request an

¹ Serial No. 75/286,177, filed May 5, 1997.

² Serial No. 75/286,178, filed May 5, 1997.

³ Serial No. 75/286,179, filed May 5, 1997.

⁴ Serial No. 75/286,180, filed May 5, 1997.

oral hearing. In view of the common issues of law and fact presented by each case, the Board has decided all four cases in this single opinion.

The only evidence of record is the evidence attached by the Trademark Examining Attorney to her initial refusal and to her final refusal in each application. This evidence may be summarized, collectively, as consisting of copies of dictionary definitions of the words "beef," "crop(s)," "cotton," "rice," and "office"; excerpts from articles obtained from the NEXIS® database demonstrating uses of the word "office" in connection with software; third-party registrations of marks covering software products in which the word "office" appears in the identification of goods and in which OFFICE has been disclaimed apart from the mark as shown; and NEXIS® excerpts demonstrating uses of the terms "beef office," "crop(s) office," "cotton office," and "rice office." In her appeal brief, the Trademark Examining Attorney has also relied on the dictionary definition of "cattle," and we take judicial notice of that dictionary definition. See Fed. R. Evid. 201. We shall refer to this evidence in more detail in the course of our discussion, *infra*, of each of the Section 2(e)(1) refusals.

A term is merely descriptive of goods or services, within the meaning of Trademark Act Section 2(e)(1), if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. See, e.g., *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987), and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). A term need not immediately convey an idea of each and every specific feature of the applicant's goods or services in order to be considered merely descriptive; it is enough that the term describes one significant attribute, function or property of the goods or services. *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); *In re MBAssociates*, 180 USPQ 338 (TTAB 1973). Whether a term is merely descriptive is determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with those goods or services, and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of its use. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979).

Applying these principles to the present case, we find as follows with respect to the Trademark Examining

Attorney's Section 2(e)(1) refusals of the four marks at issue in these applications.

BEEF OFFICE

We agree with the Trademark Examining Attorney's contention that BEEF OFFICE, the mark involved in application Serial No. 75/286,177, is merely descriptive of the goods identified in that application, i.e., "personal computer software for providing information management of accounting, tax preparation, production scheduling, education, training, and consultation for use by agricultural cattle farming businesses." Each of the words BEEF and OFFICE merely describes a function, feature or characteristic of applicant's goods, and the combining of the two words results in a composite which likewise lacks inherent distinctiveness.

The Trademark Examining Attorney has submitted dictionary evidence showing that "beef" is defined as follows: "full grown steer, bull, ox, or cow, esp. one intended for use as meat," and "the meat of a slaughtered full-grown steer, bull, ox or cow." Webster's II New Riverside University Dictionary (1994). She also has submitted the dictionary definition of "cattle," the term which appears in applicant's identification of goods: "any

of various mammals of the genus *Bos*, including cows, steers, bulls, and oxen, often raised for meat and dairy products."

In view of this dictionary evidence, we find that the word BEEF is merely descriptive as applied to software which is expressly stated to be "for use by cattle farming businesses," because it immediately and directly describes the industry and/or product in connection with which the software is designed to be used. It is not dispositive that the word "beef" might have other meanings in different contexts, i.e., that it is a slang term meaning "a complaint." We must view the term in relation to the identified goods, not in the abstract. *See In re Bright-Crest, Ltd., supra.*

We also find that the word OFFICE is merely descriptive as applied to the computer software identified in applicant's application. We take judicial notice⁵ that "office" is defined, *inter alia*, as "a place where a particular kind of business is transacted or a service is supplied," and as "the directing headquarters of an enterprise or organization." Webster's Ninth New

⁵ The Board may take judicial notice of dictionary definitions. See Fed. R. Evid. 201; Marcal Paper Mills, Inc. v. American Can Co., 212 USPQ 852 (TTAB 1991).

Collegiate Dictionary (1990) at 820. Likewise, the Trademark Examining has made of record dictionary evidence showing that "office" is defined, *inter alia*, as "a business or professional organization." Random House Unabridged Dictionary (2d Ed. 1987) at 1344. These definitions of "office" encompass the "cattle farming businesses" named in the identification of goods as the intended users of the goods.

The Trademark Examining Attorney also has submitted printouts of third-party registrations in which the word "office" appears in the identification of goods as part of the name of the goods, and in which the word OFFICE has been disclaimed apart from the mark as shown. Contrary to applicant's argument, we find that the goods identified in these third-party registrations are of the same basic type as the goods identified in applicant's application, i.e. software for office applications. These third-party registrations include: OFFICE 2000 for "integrated office management software"; PRISMA OFFICE for "office automation computer programs"; AV OFFICE for "computer programs for office automation"; KEY OFFICE MASTER for "software for use in office administration and automation"; TOM RETTIG'S OFFICE for "software in the field of business/office management"; OFFICE PROTOCOL for "computer software for

accounts receivable system for medical billings"; OFFICE WIZ for "computer programs for office management"; EASY NOTEBOOK OFFICE for "graphical user interface computer programs used for office functions"; THE OFFICE COMPANION for "software for office operations"; ADVANCED CREDIT OFFICE for "computer programs in the nature of business application programs and modules having a graphical user interface for use in banking and commercial credit industries"; CREATIVE OFFICE for "business productivity computer software"; and AGENCY OFFICE for "computer software for use in transportation industry and for order entry, storage billing, van line billing, and reconciliation statements."

Finally, the Trademark Examining Attorney has submitted excerpts of articles obtained from the NEXIS® database in response to the search request "office w/5 ((software or application or program) w/5 suite)." Those excerpts include the following usages of "office" in connection with software: "office suite software"; "office applications suites"; "suite of office automation software"; "suite programs like Microsoft Office"; "office software suite"; "office suite of applications"; "productivity software (such as office suites)"; Business Application Suites: Microsoft Office 97"; "office suites

should be chosen as part of an enterprise's software strategy"; "Lotus Smart Suite 97, our Best Buy for office suites"; and "office program suite."

This evidence suffices to establish that OFFICE is a merely descriptive term as applied to certain types of software, i.e., software designed and used for office applications, office automation, office administration, etc. Applicant's software, as identified in the application, clearly is this type of software, and the word OFFICE accordingly is merely descriptive of this feature or function of applicant's goods. Again, it is not relevant to our determination that the term "office" might have other meanings in other contexts. Applicant seeks to register the term for use in connection with office productivity software, and in that context, OFFICE is merely descriptive.

We also find that BEEF OFFICE, taken in its entirety, is merely descriptive of applicant's goods. It is not determinative that the designation "beef office" *per se* does not appear in the dictionary. See, e.g., *In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 516 (Fed. Cir. 1987); *In re Orleans Wines, Ltd.*, 196 USPQ 516 (TTAB 1977).⁶ BEEF

⁶ The Trademark Examining Attorney has submitted three NEXIS® excerpts which, she contends, shows that "beef office" is the

OFFICE simply combines a term which is merely descriptive of an industry or product, "beef," with a term which is merely descriptive of the type or function of applicant's software, i.e., "office" software. That is, the mark, when used on applicant's software product, immediately and directly informs purchasers that the product is office productivity software specially designed for use in the beef industry. No imagination or conjecture is required to reach that conclusion.

Applicant argues that even if the words BEEF and OFFICE are each, separately, merely descriptive of applicant's goods, the combination of the two words results

name of or descriptive of a type of office in the agricultural industry. The evidence does not support that contention, however. The first NEXIS® reference, "BEEF OFFICE EQUIPMENT (59%)," is devoid of any context and thus of any probative significance. The references in the second and third excerpts, i.e., "...said Denise Spanjer of the Northern Plains Premium Beef office in Mandan," and "at Laura's Lean Beef offices in Lexington," do not establish that "beef office," *per se*, refers to a type of office. Rather, the word "office(s)" in each of these references appears to be used generically and apart from the trade names preceding it, i.e., "Northern Plains Premium Beef" and "Laura's Lean Beef." (Compare, for example, the other evidence of record, discussed *infra*, from which it might be concluded that "crop(s) office," "cotton office," and "rice office" are terms which refer to types of actual offices, agencies or businesses.) Nonetheless, the failure of the Trademark Examining Attorney's evidence to establish that "beef office" has a particular descriptive significance is not dispositive, because the words considered individually are each merely descriptive, and applicant has not identified any particular non-descriptive or incongruous significance which might be attributed to "beef office," as that term is used in connection with applicant's goods.

in a composite which creates a new non-descriptive, incongruous commercial impression. We are not persuaded. Although, as a general principle, the combination of two merely descriptive words may, in appropriate circumstances, result in a composite which is not merely descriptive, applicant has failed to show that this principle is applicable in the present case. Applicant has not suggested or identified any particular non-descriptive, incongruous meaning which purchasers would attribute to BEEF OFFICE upon seeing the mark applied to applicant's goods, nor can we discern any such inherently distinctive significance of this designation. As applied to the identified goods, the composite term is as merely descriptive as each of the two words is separately.

Finally, applicant argues that there is no competitive need for others to use BEEF OFFICE on their competing goods because those third parties would remain free to use the words BEEF and OFFICE, separately, in a descriptive manner in connection with their goods. This argument does not persuade us that applicant should be allowed to register, and thus preclude others from using, the merely descriptive, non-distinctive designation BEEF OFFICE. Likewise, we are not persuaded by applicant's argument that BEEF OFFICE should be found to be inherently distinctive

merely because there is no evidence that any third parties are using or have used the term in connection with competing products. The fact that applicant may be the first and only user of a merely descriptive designation does not justify registration if, as in this case, the only significance projected by the term is merely descriptive. *See In re National Shooting Sports Foundation, Inc.*, 219 USPQ 1018 (TTAB 1983).

In summary, we find that the evidence of record supports the Trademark Examining Attorney's contention that BEEF OFFICE is merely descriptive of the goods identified in applicant's application Serial No. 75/286,177. Accordingly, we affirm the Section 2(e)(1) refusal to register that mark.

CROPS OFFICE

We also find that CROPS OFFICE, the mark involved in application Serial No. 75/286,178, is merely descriptive of the goods identified in that application, i.e., "personal computer software for providing information management of accounting, tax preparation, production scheduling, education, training, and consultation for use in the agricultural produce industry." Each of the words CROPS and OFFICE merely describes a function, feature or

characteristic of applicant's goods, and the combining of the two words results in a composite which likewise lacks inherent distinctiveness.

Our finding in connection with applicant's BEEF OFFICE mark that OFFICE is merely descriptive of applicant's goods is equally applicable in the case of applicant's CROPS OFFICE mark and the goods on which it is to be used. As discussed at length above, the evidence of record establishes that OFFICE merely describes a feature or function of applicant's office productivity software.

We also find that CROPS is merely descriptive of software "for use in the agricultural produce industry," in that it directly and immediately describes the industry and/or products in connection with which the software is designed to be used. The Trademark Examining Attorney has noted that, in applicant's CROPS OFFICE application as originally filed, applicant's software was identified as being "for use in the field of agricultural businesses for crop production." Although this language was later amended to "for use in the agricultural produce industry," we agree with the Trademark Examining Attorney's contention that this descriptive or generic use of the term "crop" in applicant's original identification of goods is evidence of

the mere descriptiveness of the word CROPS as applied to applicant's goods.

Additionally, the Trademark Examining Attorney has submitted dictionary evidence establishing that CROP is defined, inter alia, as "cultivated agricultural plants, as grain, vegetables, or fruit." Webster's II New Riverside University Dictionary, *supra* at 329. We also take judicial notice that the noun "produce," which appears in applicant's current identification of goods, is defined as "a product, esp. farm products as a whole." *Id.* at 939. This dictionary evidence establishes that "produce" and "crop" and its plural, "crops," are essentially synonyms, or at least that "produce" is subsumed within "crops." It also establishes the mere descriptiveness of the word CROPS as applied to applicant's software, which is designed "for use in the agricultural produce industry." It is irrelevant that the word "crop" or "crops" might have other meanings in different contexts. See *In re Bright-Crest, Ltd.*, *supra*.

We also find that CROPS OFFICE, taken in its entirety, is merely descriptive of applicant's goods. As discussed above in connection with the BEEF OFFICE mark, it is not determinative that the designation "crops office" *per se* does not appear in the dictionary. See, e.g., *In re Gould*

Paper Corp., supra, and *In re Orleans Wines, Ltd., supra*.

CROPS OFFICE simply combines a term which is merely descriptive of an industry or product, "crops," with a term which is merely descriptive of the type or function of applicant's software, i.e., "office" software. That is, the mark, when used on applicant's software product, immediately and directly informs purchasers that the product is office productivity software specially designed for use in the agricultural produce, or "crops," industry. No imagination or conjecture is required to reach that conclusion.

We reject applicant's argument that the combination of the two merely descriptive words CROPS and OFFICE results in a composite designation which creates a new, incongruous or otherwise inherently distinctive commercial impression. Applicant, citing to the NEXIS® evidence submitted by the Trademark Examining Attorney, contends that CROPS OFFICE might be viewed by purchasers as identifying a location, i.e., an office operated by a company or an agency involved in the agriculture industry.⁷

⁷ The NEXIS® excerpts submitted by the Trademark Examining Attorney include the following references: "...the head of the local food crop office..."; IGF [insurance company] will merge its Kansas office and Southwest crop office into a new office located in..."; "...chief of the Cilicap food crop office..."; ...[insurance company] will merge its Des Moines operation into ITT Hartford's

However, even assuming that applicant is correct in contending that "crops office" might have this additional meaning in the minds of purchasers, the mere descriptiveness of applicant's mark CROPS OFFICE is not eliminated thereby. To the extent that, as applicant contends, "crops office" refers to a business involved in the agricultural produce industry, CROPS OFFICE is merely descriptive of applicant's software because it names the potential user of the software. *See, e.g., Hunter Publishing Co. v. Caulfield Publishing Ltd.*, 1 USPQ2d 1996 (TTAB 1986); *In re Camel Mfg. Co., Inc.*, 222 USPQ 1031 (TTAB 1984). There is nothing incongruous or unusual about this alternative meaning of CROPS OFFICE, as applied to applicant's goods. CROPS OFFICE is merely descriptive of applicant's software, whether the designation is viewed as denoting office productivity software used in the agricultural crops industry, or as the name of the user of the software. No imagination is required to reach either conclusion.

For the reasons discussed above in connection with the BEEF OFFICE mark, we also reject applicant's so-called

Davenport, Iowa, crop office in June..."; "...he headed to the government crop office and applied for aid..."; and "The Ocibu [Burundi industrial crops office] director-general said hard currency receipts would fall..."

"competitive need" and "competitive use" arguments against the mere descriptiveness refusal to register CROPS OFFICE.

Because it does not appear from the record that CROPS OFFICE has any inherently distinctive significance as applied to the goods identified in application Serial No. 75/286,178, we affirm the Trademark Examining Attorney's Section 2(e)(1) refusal to register that mark.

COTTON OFFICE

We also find that COTTON OFFICE, the mark involved in application Serial No. 75/286,179, is merely descriptive of the goods identified in that application, i.e., "personal computer software for providing information management of accounting, tax preparation, production scheduling, education, training, and consultation for use by agricultural cotton farming businesses."

As discussed above, OFFICE is merely descriptive of applicant's office productivity software. The evidence of record also establishes that COTTON is merely descriptive of applicant's software, which, according to applicant's identification of goods, is designed "for use by agricultural cotton farming businesses."⁸

⁸ The Trademark Examining Attorney has submitted dictionary evidence showing that "cotton" is defined as "a plant or shrub of

We are not persuaded by applicant's arguments that COTTON OFFICE, as a composite designation, is inherently distinctive. As with the BEEF OFFICE and CROPS OFFICE marks discussed above, the designation COTTON OFFICE merely describes applicant's goods, which are essentially office productivity software designed for use in the cotton industry. Nor has applicant demonstrated that the combination of COTTON and OFFICE results in any new, incongruous or otherwise inherently distinctive composite. There is evidence of record which shows that "cotton office" can be used to refer to a business or agency involved in the cotton industry.⁹ However, this meaning or connotation of COTTON OFFICE is also merely descriptive of applicant's software, inasmuch as it names the potential users thereof. *See, e.g., Hunter Publishing Co. v. Caulfield Publishing Ltd., supra; In re Camel Mfg. Co., Inc., supra.* Also, for the reasons discussed above in

the genus *Gossypium*, grown in warm climates for the fiber surrounding the seeds"; "the soft, white downy fiber attached to the seeds of the cotton plant, used primarily for textiles"; and as "the crop of the cotton plant." Webster's II New Riverside University Dictionary, *supra*, at 317.

⁹ The Trademark Examining Attorney's NEXIS® evidence includes the following references: "...a picture of my dad and his little cotton office..."; "...they rented a building next to the cotton office..."; "...I would kind of wander down from Dad's cotton office on Front and I'd hear the music in the alleys..." "...a framed poem Bailey's now-deceased father gave him hangs in the hall of his cotton offices..." "...she was employed by the Federal Cotton Office..."

connection with the other marks, we reject applicant's so-called "competitive need" and "competitive use" arguments.

In summary, we agree with the Trademark Examining Attorney's contention that COTTON OFFICE is merely descriptive of the goods identified in application Serial No. 75/286,179, and we affirm her Section 2(e)(1) refusal to register that mark.

RICE OFFICE

Finally, we also affirm the Section 2(e)(1) refusal to register the mark RICE OFFICE for goods identified in application Serial No. 75/286,180 as "personal computer software for providing information management of accounting, tax preparation, production scheduling, education, training, and consultation for use by agricultural rice farming businesses."

As discussed above, the evidence of record establishes that OFFICE merely describes applicant's office productivity software. We also find that RICE is merely descriptive of applicant's software, which is identified in the application as being "for use by agricultural rice farming businesses."¹⁰

¹⁰ The dictionary evidence of record defines "rice" as: "a cereal grass, *oryza sativa*, cultivated extensively in warm climates and

We are not persuaded by applicant's arguments that RICE OFFICE, as a composite designation, is inherently distinctive. As with applicant's other marks discussed above, the designation RICE OFFICE merely describes applicant's goods, which are essentially office productivity software designed for use in the rice industry. Nor has applicant demonstrated that the combination of RICE and OFFICE results in any new, incongruous or otherwise inherently distinctive composite. There is evidence of record which shows that "rice office" can be used to refer to a business or agency involved in the rice industry.¹¹ However, this meaning or connotation of RICE OFFICE, to the extent that it refers to businesses in the rice industry, is also merely descriptive of applicant's software, inasmuch as it names the potential users thereof. *See, e.g., Hunter Publishing Co. v. Caulfield Publishing Ltd., supra; In re Camel Mfg. Co., Inc., supra.* Also, for the reasons discussed above in

used as a staple food throughout the world" and as "the starchy edible seed of rice." Webster's II New Riverside University Dictionary, supra, at 1009.

¹¹ The Trademark Examining Attorney's NEXIS® evidence includes the following references: "Rice Office executive director Gerardo Alvarez said..." "changes to the legal structure of the Costa Rican Coffee Institute, the Rice Office, the Sugar League..." "U.S. rice office opens in Japan" "to register, call the Rice Office at..."

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connection with the other marks, we reject applicant's "competitive need" and "competitive use" arguments.

In summary, we agree with the Trademark Examining Attorney's contention that RICE OFFICE is merely descriptive of the goods identified in application Serial No. 75/286,180, and we affirm her Section 2(e)(1) refusal to register that mark.

Decision: The refusals to register in application Serial Nos. 75/286,177, 75/286,178, 75/286,179 and 75/286,180 are affirmed.

B. A. Chapman

H. R. Wendel

C. M. Bottorff

Administrative Trademark Judges
Trademark Trial and Appeal Board